

ARKANSAS COURT OF APPEALS  
NOT DESIGNATED FOR PUBLICATION  
D.P. MARSHALL JR., JUDGE

DIVISION I

CA07-449

12 March 2008

RICHARD SCOTT THORNTON,	AN APPEAL FROM THE	
	CRAWFORD COUNTY CIRCUIT	
APPELLANT	COURT [DR-2006-210-II]	v.
	THE HONORABLE MICHAEL	
WHITNEY JEAN THORNTON,	MEDLOCK, JUDGE	
APPELLEE	AFFIRMED IN PART; REVERSED	
	AND REMANDED IN PART	

After being married for five years and having a daughter, Richard and Whitney Thornton divorced. The circuit court entered a decree awarding alimony and child support to Whitney and dividing the Thorntons' marital property and debts. On appeal, Richard argues that the circuit court abused its discretion by awarding alimony, and clearly erred by dividing the marital property and debts unequally without stating its reasons for doing so. We affirm the award of alimony and the debt division, but reverse and remand because of the unexplained unequal property division.

*Alimony.* The circuit court awarded Whitney \$60 a week in temporary alimony for two years. Richard first argues that the court abused its discretion by even reaching the issue of alimony. He asserts that because Whitney never asked for spousal support in her pleadings, the court improperly raised the issue *sua sponte*. We disagree. Whitney sought,

but did not get, temporary spousal support pending the final hearing. And at the final hearing, this exchange occurred:

COURT: Are you asking for support here for yourself and the child or just for the child?

[WHITNEY]: For insurance?

COURT: No.

[WHITNEY'S LAWYER]: List – listen to his question. Are you asking support for you and the child or just the child?

[WHITNEY]: For me and the child.

COURT: Anything else?

Richard did not object to the circuit court's question or Whitney's answer. We hold, therefore, that the issue of alimony was raised and tried with Richard's implied consent. *McKay v. McKay*, 340 Ark. 171, 182, 8 S.W.3d 525, 532 (2000); Ark. R. Civ. P. 15(b).

We also reject Richard's argument that the alimony award itself was an abuse of discretion. The circuit court had to consider, among other things, Whitney's need and Richard's ability to pay. *Hiatt v. Hiatt*, 86 Ark. App. 31, 35–36, 158 S.W.3d 720, 723–24 (2004). Alimony should correct imbalances in post-divorce incomes. 86 Ark. App. at 35, 158 S.W.3d at 723. Here it will do so. At the time of the hearing, Richard had a greater income than Whitney. She had spent all the money that she had received from the sale of one of their two homes on moving and living expenses. Moreover, Whitney (who now lives in Oklahoma) testified that she would still have to pay for any of their daughter's medical expenses that were outside of Richard's insurance-network coverage. The evidence that Whitney could probably earn more than she was earning at the time of the

hearing is not dispositive because the circuit court awarded her *temporary* alimony. She testified that she plans to get a higher-paying job. Pursuant to the court's ruling, in January 2009—when Whitney has re-settled, and their daughter has reached school age—the alimony payments will stop.

We hold that the circuit court properly exercised its discretion in awarding alimony. *Hiett*, 86 Ark. App. at 35, 158 S.W.3d at 723. And unlike with child-support awards and marital-property divisions, the court was not required to explain its reasons for awarding alimony. *Compare* Ark. Code Ann. § 9-12-312(a)(2) and § 9-12-315(a)(1)(B) (Repl. 2008). Notwithstanding the detailed calculations offered by Richard, we see no abuse of the circuit court's discretion on this issue.

*Property Division.* Richard next argues that the circuit court clearly erred by dividing the equity in the parties' vehicles unequally without stating its reasons for doing so. Richard testified at the hearing that he spent \$7,000.00 of marital funds to make a partial payment on a new truck after he and Whitney separated. He conceded that half of that money belonged to Whitney. The court denied Whitney's claim for reimbursement, and awarded the truck (along with its debt) to Richard. It awarded the family SUV, an Acura which was paid for and worth \$28,000.00, to Whitney. The court stated that it was basing its ruling on the "equities involved [in the automobiles]," and found that Richard had intended for Whitney to use the Acura. The circuit court had to divide the marital property equally unless it found that an equal division would be inequitable. Ark. Code Ann. § 9-12-315(a)(1)(A). If, however, the court divided the property unequally, then it had to consider the statutory factors and explain its division. Ark. Code Ann. § 9-

12-315(a)(1)(B).

The court did not sufficiently explain its reasons for dividing the equity in Richard and Whitney's vehicles unequally. Its passing reference in its bench ruling to the "equities involved" and Richard's intentions about the Acura are not enough. Because we do not know what circumstances the circuit court considered when it made its unequal division, we cannot tell whether the court's decision was clearly erroneous. *Canady v. Canady*, 285 Ark. 378, 381–82, 687 S.W.2d 833, 834–35 (1985). We therefore reverse in part and remand for reconsideration. The circuit court should revisit the issues about the equity in the vehicles, and either make an equal division or explain why the unequal division made is equitable.

*Marital-Debt Distribution.* Richard's third argument concerns \$11,339.99 that he paid, either to maintain the marital property or solely for Whitney's benefit, after they separated. He wanted Whitney to reimburse him for half of these payments, which he made from his non-marital funds. Whitney acknowledged that she benefitted from all of Richard's payments for their joint expenses. The court, however, ordered Whitney to repay Richard less than half of the \$5,670.00 that he sought.

After reviewing the record, we conclude that the circuit court's order of partial reimbursement was not clearly erroneous. *Thompson v. Fischer*, 364 Ark. 380, 382, 220 S.W.3d 622, 624 (2005); *Williams v. Williams*, 82 Ark. App. 294, 300, 108 S.W.3d 629, 633 (2003). These expenses were essentially marital debts to which Arkansas Code Annotated § 9-12-315(a)(1)(A) does not apply. *Williams*, 82 Ark. App. at 308–11, 108 S.W.3d at 638–40. There was no presumption that this debt should be divided equally,

nor was the circuit court required to make findings explaining an unequal division. *Ibid.*

Because the record shows that Richard's income exceeded Whitney's during their separation, we see no clear error in the court's adjudication of the debt and reimbursement issues.

Affirmed in part; reversed and remanded in part.

HART and BIRD, JJ., agree.